IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 336 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HEMUBHAI NAGJIBHAI PAGI - Appellant(s)
Versus
JETHABHAI GHELABHAI KOLI & 2 - Defendant(s)

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Appearance :
MR JD AJMERA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS PHALGUNI PATEL APP for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/08/2006

ORAL JUDGMENT

1. This appeal under Section 30 of the Workmen Compensation Act, 1923 is directed against the judgement and award dated 09.03.1990 passed by the Commissioner of Workman Compensation and Civil Judge (S.D.), Surendranagar in W.C.C. No. 5 of 1987 whereby the same was dismissed.

2. The case of the appellant is that the original opponent No. 1 Jethabhai Ghelabhai Koli was digging a well of the State holding Forest Department and on

28.12.1986, appellant has sustained injuries on his right hand thumb and fingers and after taking treatment, the right palm has become absolutely useless due to the disability. Therefore applicant claimed Rs. 80,088.75 by way of compensation. The trial court after hearing passed the above order.

3. Learned advocate for the appellant has submitted that on the facts and circumstances of the case and evidence on record the Commissioner has erroneously dismissed the application of the appellant. According to him the Commissioner ought to have held the respondent liable to pay compensation to the applicant as claimed for by him.

4. Heard. I have gone through the judgement and award of the Trial Court. While passing the judgement and award the Trial Court has found as follows:

> “there are material contradictions in the stand taken by the appellant and opponent No. 1 in their pleadings. The work was carried for about 2 months and appellant was labourer of opponent No. 1. Opponent No. 1 saying that he was also a labourer and he had not entertained any contract for the work. As against both these versions, it has been definitely proved by the State by the documentary evidence which are part of the account of the Forest Department, that as per Exh. 41 the tender to dig the well

> was granted in favour of the opponent No. 1 and that on completion of the work on 16.12.1986, the amount due as per the details given in the various voucher Exh. 42 and 43 were completely paid. Voucher Exh. 43 is dated 21.12.1986 and paid on 31.12.1986 as per the endorsement by Deputy Contractor and Rs. 4,200/- are paid, whereas Rs. 900/- have also been paid on the same day to the opponent No. 1. This voucher of the Account Department cannot be manipulated as they bear the voucher number as well as the endorsement of payment by different higher authorities. This clearly indicates that the tender Exh. 41 for the labour work was granted to opponent No. 1 and there is no evidence that the appellant had worked as labourer at the place. Had there been story of the appellant true, then there was no necessity for opponent No. 1 to depose against him as he was contractor for the work. Admittedly, the appellant had sustained injuries on 26.12.1986, but vouchers are discharged as per the work completed on 16.12.1986. it is true that amounts of both the vouchers have been paid on 31.12.1986, but that would be so because of the fact that the voucher requires to be submitted to the higher authority and granted for payment accordingly. “

5. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal

is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*